

SUBCHAPTER A. AUTOMOBILE INSURANCE
DIVISION 3. MISCELLANEOUS INTERPRETATIONS
28 TAC §5.208

INTRODUCTION. The Texas Department of Insurance proposes new 28 TAC §5.208, concerning disclosure requirements for named driver personal automobile insurance policies under Insurance Code §1952.0545. Senate Bill 1567, 83rd Legislature, Regular Session (2013) created Insurance Code §1952.0545, which requires written and oral disclosures, and contemporaneous written confirmation of the oral disclosure, for named driver policies.

The commissioner of insurance adopted amendments to 28 TAC §5.204 on April 28, 2014, to implement disclosure requirements for the prescribed auto ID card form under Insurance Code §1952.0545. Section 5.208 implements the named driver policy disclosure requirements in Insurance Code §1952.0545.

EXPLANATION. Insurance Code §1952.0545 requires agents and insurers to provide disclosures to applicants and insureds that named driver policies have coverage restrictions. Section 5.208 is necessary to

1. clarify the disclosure and applicability requirements; and
2. ensure that agents and insurers issuing new or renewal named driver policies are consistent in applying the disclosure requirements in Insurance Code §1952.0545.

Typically, a standard personal auto policy provides coverage to almost everyone who drives the covered vehicle, unless specifically excluded. In contrast, a named driver policy does not provide coverage for individuals who are residents of the named insured's household and are not named as insureds on the policy. Insurance Code §1952.0545 requires specific disclosures for named driver policies at the time the new or renewal policy is issued.

The disclosures put the applicant or insured on notice that a named driver policy has limitations in coverage and that whether there is coverage depends on who is driving the car. The disclosures alert the applicant or insured to review the extent of coverage with the agent or insurer. Similarly, the disclosure on the auto ID card warns police officers and third parties involved in accidents that a particular driver may not be insured under the policy if that driver is not named on the auto ID card. The disclosures do not say that every driver not named on the

policy is not covered—they simply alert people that, unlike a standard auto policy, not all individuals residing in the named insured’s household are covered under the policy. Although some named driver policies cover more people than just the named insured, there may be a substantial group of people who could drive the car and be uninsured under that policy, including relatives, unrelated roommates, or other household residents.

TDI has received many inquiries and filings as a result of the disclosure requirements. Additionally, TDI received comments following a stakeholder meeting held on December 2, 2013, and comments on an informal draft posted on TDI’s website on April 3, 2014. TDI considered those comments in drafting this proposal.

Definition of “Named Driver Policy” and Applicability of §1952.0545

Section 5.208(a) and (b) clarify the definition of “named driver policy” and the applicability of the disclosure requirements under Insurance Code §1952.0545.

Section 5.208(a)(1) restates the definition of “named driver policy” in Insurance Code §1952.0545(a) for completeness and ease of use. Insurance Code §1952.0545(a) defines a named driver policy as “an automobile insurance policy that does not provide coverage for an individual residing in a named insured’s household specifically unless the individual is named on the policy. The term includes an automobile insurance policy that has been endorsed to provide coverage only for drivers specifically named on the policy.”

Section 5.208(a)(2) clarifies that the definition of “named driver policy” includes automobile insurance policies that do not cover all household residents. This interpretation is consistent with the intent of §1952.0545, which is to inform the insured or applicant that the policy has coverage restrictions that make it different from a standard personal auto policy.

Under a narrow reading of the definition of “named driver policy,” a policy that covers any household residents—even just one—other than the household residents specifically identified by name on the policy is not a named driver policy. However, almost all auto policy forms provide coverage for a resident spouse as a “covered person” under the policy, even if the spouse is not named and the policy does not cover every other household resident. Reading the definition of “named driver policy” narrowly, to include only policies that cover named drivers but *no other* household residents, would mean that there are virtually no named driver policies approved for use in Texas.

Such a reading is contrary to code construction guidelines under Government Code §311.021(2) and (4), which state that it is presumed that “the entire statute is intended to be effective,” and that “a result feasible of execution is intended.” Additionally, not requiring disclosures on policies that do not cover all household residents would frustrate the intent of the statute by failing to warn policyholders and other interested parties who might not realize that some household residents are not covered.

Section 5.208(a)(3) states that the definition of “named driver policy” does not include an automobile insurance policy that has been endorsed to exclude specific drivers by name based solely on that exclusion. Those policies are known as “excluded driver policies” or policies with “excluded driver endorsements.” A named driver policy that also has an excluded driver endorsement is still a named driver policy. For example, a policy that does not cover every household resident, and that also excludes “John Doe,” is a named driver policy with an excluded driver endorsement. Section 5.208(a)(3) clarifies that excluding specific drivers by name does not, by itself, make a policy a named driver policy.

An excluded driver policy is functionally the opposite of a named driver policy. While a named driver policy generally covers drivers residing within the household that are named on the policy and drivers from outside the household operating the vehicle with permission from the insured, an excluded driver policy generally covers all drivers except those specifically excluded from coverage by name. Those who buy excluded driver policies are already informed that the policy does not cover all possible drivers, because the excluded drivers are specifically listed by name.

Section 5.208(b)(1) clarifies that the section applies to all new and renewal named driver policies of any term, to policies in which any type of coverage applies only to named drivers, and to named non-owner policies. Nothing in Insurance Code §1952.0545(a) suggests that it does not apply to all named driver policies, or that it distinguishes between liability and physical damage (collision) coverages.

Insurance Code §1952.0545 applies to every renewal of a named driver policy. Senate Bill 1567, Section 3, states that it applies to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2014. It does not say “annually at renewal,” “at the first renewal after January 1, 2014,” or “before accepting the initial premium or fee.” Instead, Insurance Code §1952.0545(b) requires an agent or insurer to make oral and written disclosures

to the applicant or insured before accepting any premium or fee. If the disclosure requirements were intended to apply only to new policies, only the term “applicant” would appear in the text. If the disclosure requirements were not meant to apply to renewals, the statute would not have included the word “insured” at all. Moreover, if the disclosure requirements were only intended to apply to an insured with an existing policy at the time of SB 1567’s effective date and to no renewals thereafter, §1952.0545(b) would state “insured with an existing policy on January 1, 2014.”

Government Code §311.021(2) states that, in enacting a statute, it is presumed that the entire statute is intended to be effective. Ignoring the inclusion of the word “insured” would be contrary to this presumption. In addition, the phrase “any premium or fee” in Insurance Code §1952.0545(b) logically includes renewal premiums. Finally, other statutes that require insurers to obtain documents from insureds—for example, Insurance Code §1952.101, pertaining to written rejection of uninsured or underinsured motorist coverage, and §1952.152, pertaining to written rejection of personal injury protection—were amended to include specific language that the insurer is not required to offer the rejected coverage again for reinstated or renewal policies. Insurance Code §1952.0545 contains no such provision. As a result, TDI must conclude that the disclosure requirements apply to renewals.

Section 5.208(b)(3) clarifies that the section applies to all agents and insurers offering automobile insurance in Texas, which is consistent with Insurance Code §1952.0545(b) - (e).

Disclosure Requirements

Section 5.208(c) clarifies the disclosure requirements for named driver policies under Insurance Code §1952.0545. Insurance Code §1952.0545(b) requires an agent or insurer, before accepting any premium or fee for a named driver policy, to make the following disclosure, orally and in writing, to the applicant or insured, “WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS RESIDING IN THE INSURED’S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY.”

Insurance Code §1952.0545(c) and (d) require an agent or insurer that delivers or issues for delivery a named driver policy in Texas to receive a copy of the disclosure in subsection (b) that is signed by the applicant or insured, and to specifically include in the policy and

conspicuously identify on the front of any proof of insurance document issued to the insured the required disclosure under subsection (b).

Insurance Code §1952.0545(e) requires the agent or insurer to require the applicant or insured to confirm contemporaneously in writing the provision of oral disclosure under subsection (b).

Section 5.208(c)(1) restates the statute to list the procedural requirements. It states that an agent or insurer may not accept a premium or fee for a named driver policy until the agent or insurer has made the required oral and written disclosures, received a signed copy of the written disclosure, and received a contemporaneous written confirmation of the oral disclosure.

Section 5.208(c)(2) restates the disclosure requirement in Insurance Code §1952.0545(b) to make the rule easier to read and understand.

Section 5.208(c)(3) affirms that an agent or insurer may provide the oral disclosure live or by using a recording, and allows telephone and Internet disclosures. Insurance Code §1952.0545 does not expressly require that the oral disclosure be given and received in person; and Insurance Code §35.003 allows agents and insurers, upon agreement of all parties to the business, to conduct business electronically to the same extent that they are authorized to conduct business otherwise.

Section 5.208(c)(4) reiterates the requirement in Insurance Code §1952.0545(e) for contemporaneous written confirmation of the oral disclosure.

Section 5.208(c)(5) reiterates the requirements in Insurance Code §1952.0545 that an agent or insurer must include the written disclosure in the policy and on any proof of insurance document issued to the insured, and must require an applicant or insured to sign a copy of the disclosure.

Section 5.208(c)(6) provides that all signatures that §5.208 requires—and which are required by Insurance Code §1952.0545—must be original or electronic signatures executed for each new and renewal policy. Electronic signatures must comply with Business and Commerce Code Chapter 322 (the Uniform Electronic Transactions Act), Insurance Code Chapter 35, and any applicable rules. Section 5.208(c)(6) also clarifies certain prohibitions with regard to the signatures required under this section—namely, that signatures must not precede the actual provision of the disclosure, and may not be copied, presumed, or assumed on payment.

Under §5.208(c)(7), agents and insurers must provide the disclosures that Insurance Code §1952.0545 requires in English, and may provide the disclosures in other languages.

Section 5.208(d) provides that accepting installment payments of premium and associated fees does not, by itself, trigger a requirement for a new set of disclosures under Insurance Code §1952.0545. Insurance Code §1952.0545(b) requires agents and insurers to comply with the disclosure requirements before accepting any premium or fee for a named driver policy. The statute does not state that the disclosure must be given repeatedly during the term of the policy. Installment payments do not require a new set of disclosures because at the time an insured makes an installment payment the policy has already been issued, and the agent or insurer was required to have already provided the disclosures for that policy's term.

Noncompliance

Section 5.208(e) clarifies that an agent or insurer may not use noncompliance with Insurance Code §1952.0545 or the proposed section as a reason to avoid liability under the policy, and that noncompliance is not grounds for cancellation of the insured's policy under Insurance Code §551.104. Insurance Code §551.104 provides that an insurer may cancel a personal automobile policy only for specified reasons, including: nonpayment of premium; fraud; if continuing the policy would be illegal; if there is an increase in hazard within the insured's control; if specific circumstances pertaining to suspension or revocation of a driver's license or motor vehicle registration exist; or, with proper notice, on any 12-month anniversary of the original effective date of the policy. An agent or insurer's failure to comply with the disclosure requirements in Insurance Code §1952.0545 or the proposed section does not fall into any of the categories in Insurance Code §551.104.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marilyn Hamilton, director of the Personal and Commercial Lines Office for the Property and Casualty Section, has determined that, for each year of the first five years the proposed section is in effect, there will be no measurable fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. Ms. Hamilton does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed section is in effect, Ms. Hamilton expects that enforcing or administering the proposed section will have the significant public benefits of ensuring that TDI's rules conform to Insurance Code §1952.0545, and ensuring that consumers who purchase named driver policies are informed of the restrictions on coverage under named driver policies. Ms. Hamilton expects that the proposed section will not increase the cost of compliance with Insurance Code §1952.0545 because it does not impose requirements beyond those in the statute. Insurance Code §1952.0545 requires an agent or insurer to make the disclosures and obtain signatures from the applicant or insured for each new and renewal named driver policy. As a result, the costs associated with making the disclosures and obtaining signatures do not result from the enforcement or administration of §5.208.

Ms. Hamilton does not anticipate any adverse economic effect on large or small insurers from the proposed rule. Insurance Code §1952.0545 created the disclosure requirements. Section 5.208 clarifies the applicability for those requirements and specifies some acceptable and unacceptable methods of compliance. Insurers can decide how to comply with the disclosure requirements in Insurance Code §1952.0545, provided that the method falls within the scope of the law. All insurers that write named driver policies need to take basic measures, including filing updated policy forms that contain the written disclosure and adopting procedures to provide the oral disclosure and obtain written confirmation that it was provided. None of these basic measures are more onerous for small and micro businesses than for larger insurers, and all of those measures are necessary to comply with the statute.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. TDI has determined that §5.208 will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses. Insurance Code §1952.0545 applies equally to all insurance companies writing named driver policies. The disclosures are mandated by statute, and the rule does not specify any additional requirements. As a result, and in compliance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Submit any written comments on the proposal no later than 5:00 p.m., Central time, on August 25, 2014. TDI requires two copies of your comments. Send one copy by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. Send the other copy by mail to the Texas Department of Insurance, Personal and Commercial Lines Office, Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78714-9104; or by email to mark.worman@tdi.texas.gov. The commissioner will also consider written comments and public testimony presented in a public hearing under Docket No. 2770 at 9:00 a.m., Central time, on August 20, 2014, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

STATUTORY AUTHORITY. TDI proposes §5.208 under Insurance Code §§1952.0545, 551.104, and 2301.006; Insurance Code Chapter 35; Business and Commerce Code Chapter 322 (the Uniform Electronic Transactions Act); Government Code §311.021; and Insurance Code §36.001.

Insurance Code §1952.0545 requires the following disclosure for named driver policies, "WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS RESIDING IN THE INSURED'S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY."

Insurance Code §551.104 provides that an insurer may cancel a personal automobile policy only under certain circumstances.

Insurance Code §2301.006 requires insurers to file policy forms with the commissioner and receive the commissioner's approval of the forms before delivering them or issuing them for delivery.

Insurance Code Chapter 35 allows a regulated entity, upon agreement of all parties, to conduct business electronically to the same extent that the entity is authorized to conduct business otherwise. The chapter also provides requirements for those electronic transactions.

Business and Commerce Code Chapter 322 provides requirements for electronic records and electronic signatures relating to a transaction.

Government Code §311.021 states that, in enacting a statute, it is presumed that the Legislature intended (1) compliance with the constitutions of Texas and the United States; (2) that the entire statute is effective; (3) a just and reasonable result; (4) a result feasible of execution; and (5) to favor public interest over any private interest.

Insurance Code §36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 5.208 implements Insurance Code §1952.0545, enacted by Senate Bill 1567, 83rd Legislature, Regular Session (2013).

TEXT.

§5.208. Disclosures for Named Driver Automobile Insurance Policies.

(a) Definition.

(1) Under Insurance Code §1952.0545(a), a named driver policy is an automobile insurance policy that does not provide coverage for an individual residing in a named insured's household specifically unless the individual is named on the policy. The term includes an automobile insurance policy that has been endorsed to provide coverage only for drivers specifically named on the policy.

(2) A policy is a named driver policy if it does not provide coverage for one or more individuals who reside in the named insured's household and who are not named on the policy.

(3) An automobile insurance policy that has been endorsed to exclude one or more drivers specifically by name does not fall within the definition of a named driver policy based solely on that exclusion.

(b) Applicability. This section applies to:

(1) All new and renewal named driver policies, including :

(A) policies of any term;

(B) policies in which any type of coverage applies only to named drivers;

and

(C) named non-owner policies.

(2) Agents and insurers offering automobile insurance in this state, including an insurance company, corporation, reciprocal or interinsurance exchange, mutual insurance company, association, Lloyd's plan or other insurer, and a county mutual insurance company.

(c) Disclosures.

(1) Disclosure requirements. An agent or insurer may not accept a premium or fee for a new or renewal named driver policy until the agent or insurer has:

(A) made the oral disclosure under paragraph (3) of this subsection;

(B) received a contemporaneous written confirmation of the oral disclosure under paragraph (4) of this subsection;

(C) made the written disclosures under paragraph (5) of this subsection;

and

(D) received a signed copy of the written disclosure under paragraph (5)(B) of this subsection.

(2) Content. Oral and written disclosures for named driver policies must include the following, "WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS RESIDING IN THE INSURED'S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY."

(3) Oral disclosure. An agent or insurer may comply with the oral disclosure requirement by delivering the disclosure live or using a recording:

(A) in the presence of the applicant or insured;

(B) over the telephone; or

(C) over the Internet (for example, by Internet video call).

(4) Signed confirmation of oral disclosure. An agent or insurer must require an applicant or insured to sign a written confirmation that the agent or insurer has provided the oral disclosure. The applicant or insured must sign the written confirmation contemporaneously with receiving the oral disclosure.

(5) Written disclosures. An agent or insurer must:

(A) include the disclosure in the policy and on any proof of insurance document issued to the insured, including an auto ID card issued under §5.204 of this title; and

(B) require an applicant or insured to sign a copy of the disclosure.

(6) Signatures. All signatures required by this section must be original or electronic signatures executed specifically for each new and renewal policy.

(A) Electronic signatures must comply with Business and Commerce Code Chapter 322 (Uniform Electronic Transactions Act), Insurance Code Chapter 35 (Electronic Transactions), and any applicable rules.

(B) Signatures must not be:

(i) made before the agent or insurer makes the disclosure;

(ii) reproduced, transferred, or otherwise replicated from a signature on file with the agent or insurer; or

(iii) merely presumed to exist.

(C) An agent or insurer may not require, agree, or assume that a signature requirement is met based on payment received from the applicant or insured.

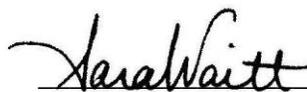
(7) Language. Agents and insurers must provide the disclosures in English and, in addition, may provide them in other languages.

(d) Installment payments. After complying with the disclosure requirements for each new and renewal policy, an agent or an insurer is not required to comply with subsection (c) of this section each time the agent or insurer accepts an installment payment during that policy's term.

(e) Failure to comply. An agent or insurer may not use noncompliance with Insurance Code §1952.0545 or this section as a reason to avoid liability under the policy. Noncompliance with Insurance Code §1952.0545 or this section is not grounds for cancellation under Insurance Code §551.104.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 8, 2014



Sara Waitt, General Counsel
Texas Department of Insurance